In the circumstances, I found that there was no admissible evidence which proved that the appellants were at the material time the partners of the firm in whose premises the pirated tapes were seized and thus no link was established between the tapes and the appellants.

Accordingly, I allowed the appeal, quashed the conviction and ordered that the fines be refunded to the appellants. The order for the forfeiture and destruction of the pirated tapes was confirmed.

Appeal allowed.

Solicitors: *Wee, Ramayah & Partners.*

A MALAYSIAN REPORTS

PHUA CHIN CHEW & ORS. v. K.M. & ORS.

[S.C. (Wan Suleiman, Mohamed Azmi & Syed Agil Barakbah S.C. JJ.) February 25 & July 7, 1987]

B **[Kuala Lumpur – Supreme Court Civil Appeal No. 350 of 1985 (Muar High Court Civil Suit No. 154 of 1983)]**

Limitation – Teacher in government teaching service resigned while under attack of schizophrenia – Resignation accepted and service terminated – Striking out action on ground of limitation – Committee appointed – Action by C *Committee filed within 3 years of its appointment but over 3 years after resignation letter – Application to strike out action on ground of limitation – When time begins to run – Mental Disorders Ordinance, 1952, s. 10(1) – Public Authorities Protection Act, 1948, s. 2(a) – Limitation Act, 1953, ss. 3, 24 & 33(1).*

Mental Disorder – Person mentally ill – Resignation D *from service – Letter sent while under attack of schizophrenia – Committee appointed – Limitation of action.*

The respondent K.M., a teacher, joined the government teaching service on January 20, 1971, and was attached to the High School, Muar, teaching there till January, 1977. He was confirmed as a permanent teacher on January 2, 1974, and on January 1, 1976, was placed under the pen- E sionable scheme. He was granted medical leave from September 5, 1976, to November 11, 1976. On November 15, 1976, he was admitted to the Psychiatric Ward of the University Hospital for treatment of mental disorder. On discharge he was transferred on medical advice to Sekolah Menengah Jenis Kebangsaan, Melaka. On April 15, 1977, he was taken ill again and was admitted to the ward for treat- F ment of schizophrenia till May 12, 1977. On June 29, 1977, while labouring under an attack of schizophrenia, the respondent wrote a letter to the appellants purporting to resign from his service as a teacher by giving one month's notice. The said letter of resignation was accepted by the appellants who terminated his services accordingly.

G Subsequently, the respondent's two brothers applied to the court and were appointed Committee of the respondent on June 13, 1982. The Committee filed the present suit on June 2, 1983. The appellants applied to strike out the suit on the ground of limitation. The learned judge dismissed the application and hence this appeal. The question for decision is whether the time of three years began to run H from the date of appointment of the Committee or from the date of the letter of resignation or the acceptance by the Government of the offer to resign.

Held, dismissing the appeal with costs: time begins to run from the date of the appointment of the Committee, and not from the date of the letter of resignation or the acceptance by the Government of the offer to resign. The I action was well within the 3-year period of limitation under section 2(a) of the Public Authorities Protection Act, 1948.

Cases referred to:

(1) *Haji Hussin bin Haji Ali & Ors.* v. *Dato Haji Mohamed bin Yaacob & Ors. & Connected Cases* [1983] 2 M.L.J. 227.

(2) *Jacobs & Ors.* v. *London County Council & Anor.* [1935] 1 K.B. 67.
(3) *Todd* v. *Davison* [1971] 1 All E.R. 994 H.L.

HIGH COURT.

E. Ramasamy for the plaintiff.

Mary Lim Thian Suan (Miss) (Senior Federal Counsel) for the defendants.

Eusoff Chin J.: The first plaintiff was a government school teacher. The second and third plaintiffs are the Committee members acting for, and managing the affairs and well being of the first plaintiff *vide* Order of the Muar High Court in Originating Summons No. 69 of 1982, because the first plaintiff is a mental patient.

According to the Statement of Claim of the plaintiffs and the affidavit filed by their solicitor to oppose the application to strike out the suit, the 1st. plaintiff started work as a teacher on January 2, 1971. He was given medical leave from September 5, 1976, to November 11, 1976. On November 15, 1976, his illness was traced to psychiatric causes and he was admitted to the Psychiatric Ward of the University Hospital Kuala Lumpur till December 9, 1976. He was again admitted to the Psychiatric Ward of the same hospital from April 15, 1977, to May 12, 1977.

On February 1, 1977, on the recommendation of Professor Teoh Jin Yin of the Department of Psychological Medicine, Faculty of Medicine, University Malaya, that the first plaintiff was suffering from mental disorder, the first plaintiff was transferred from Sekolah Tinggi, Muar, to Sekolah Menengah Jenis Kebangsaan, Melaka.

The first plaintiff while labouring under and suffering from mental illness called schizophrenia, on June 29, 1977, wrote to one of the defendants to say he was resigning from the government service, and the defendants or one of them terminated the first plaintiff's service. It is alleged that the defendants knew that the first plaintiff was suffering from mental illness, and ought not to have accepted the letter of resignation of the first plaintiff.

On September 12, 1977, Dr. Chan Fook Cheong, Consultant Physician of Hospital Besar, Johor Bahru, wrote a letter to the first defendant notifying the first defendant of the first plaintiff's mental and physical condition. The brothers of the first plaintiff made personal approaches to the defendants not to accept the letter of resignation but to convene a medical board for the first plaintiff, but without response.

Since the first plaintiff was suffering from mental illness, and was unlikely to recover from his illness the second and the third plaintiffs (brothers of the first plaintiff) applied to the Court *vide* Originating Summons No. 69 of 1982 to appoint them as committee to manage the affairs of the first plaintiff. The High Court made the order on June 13, 1982. On June 2, 1983, the committee filed this action against the defendants.

On June 10, 1985, the learned Federal Counsel acting for the four defendants filed an application to strike out the suit since the plaintiffs had not filed their action within three years of the date of termination of the first plaintiff's services as required by section 2(a) of the Public Authorities Protection Act, 1948 (Act 198).

The Statement of Claim had alleged, at paragraphs 9 to 13, that the first plaintiff had been suffering from a mental disorder as from September 5, 1976, and had been in and out of the psychiatric ward of the University Hospital, Kuala Lumpur. The defendants had not denied that this was so. (See paragraph 3 of the Statement of Defence where the defendants had admitted paragraphs 9 to 12 of the Statement of Claim.)

I had from the outset indicated to both the counsel for the plaintiffs and for the defendants that, in view of the mental condition of the first plaintiff, they should argue before me on the question whether for the purposes of section 2(a) Public Authorities Protection Act, time had begun to run one month after the date of the submission of the resignation letter submitted by the plaintiff, which was July 29, 1977.

Exhibited to the affidavit of the plaintiff's counsel filed to oppose the application to strike out this Action is a medical report on the first plaintiff issued by the Pakar Perubatan Jiwa, Hospital Permai, Johor Bahru. It states:

"E. Ramasamy & Co.,
K B. (P.O. Box) No. 509,
No. 12, Jalan Petrie,
Muar,
Johor.

Tuan,

Per: Kanesan s/o Muthusamy. J. 001151.

I refer to your letter Ref: 4019/A2/ER/pk dated 4th July, 1985 and submit herewith the report as requested. My report is based on the examination of your client on 10th July, 1985 as well as on the records available about him.

Mr. Kanesan appears to have first fallen ill around August, 1976 when he presented with a serious psychiatric illness and was treated in Universiti Hospital from 15th November, 1976 to 9th December, 1976. He was treated for Paranoid Schizophrenia, an illness characterized by false morbid persecutory beliefs as a result of which he was uncooperative, resistive and hostile. Subsequently he was admitted three more times to University Hospital. Even after treatment, according to the reports, though he was more manageable, he had not recovered completely and harboured unrealistic thoughts. He was admitted to Hospital Permai in July, 1979 from where he absconded after a month. He was admitted again for more than a year from 16th August, 1981 to 26th December, 1982. According to our hospital records, by then his illness had incapacitated him to such an extent that the required prolonged rehabilitation. This was so because his thinking was markedly abnormal in that spontaneous speech was very limited. He kept to himself most of the time. He had degraded habits. He exhibited no interest in himself or others. He was dull and indifferent in contrast to how he was when he first became ill. He improved slightly and was discharged and has been on continuous psychiatric out-patient treatment in Muar Hospital ever since.

When he was examined by me on 10th July, 1985, he appeared not to have changed much. He was still reported to be disinterested in anything, not interacting with people and sleeping or absorbed in his own thoughts most of the time. He still exhibits poverty of thought with very limited spontaneous speech. He is apathetic towards his condition and his future.

It is my opinion that he has residual features of a debilitating illness that has permanently disrupted his personality and it is unlikely that he will recover completely from it.

To answer your question:

1. When did the said Kanesan s/o Muthusamy first fall ill?

   It is probably around August, 1976.

2. In your opinion was the said Kanesan s/o Muthusamy of sound mind at the time he is alleged to have tendered his resignation letter in June, 1977 or thereabout?

   In my opinion, based on the records, he was of unsound mind at that time.

3. Is the said Kanesan s/o Muthusamy still suffering from the illness.

   Yes, he is.

4. Will he ever get cured of Schizophrenia?

   It is most unlikely.

5. Has the said Kanesan s/o Muthusamy ever at any period been of sound mind since he fell ill in the year 1976 or thereabout?

   No. In my opinion the illness has persisted throughout this period.

Sekian.

'BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,

Sgd.

.....

(DR. N. RAMAN. M.B.B.S. M.P.M.)
Pakar Perubatan Jiwa,
Hospital Permai,
Johor Bahru."

The learned Federal Counsel for the defendants submitted that the limitation period under section 2(a) of the Public Authorities Protection Act should run from the date of the first plaintiff's letter of resignation, and cited the case of *Haji Hussin bin Haji Ali & Ors.* v. *Dato' Haji Mohamed bin Yaacob & Ors. and Connected Cases.*[1] I did not agree with the learned Federal Counsel's submissions.

In the case cited, the 157 plaintiffs were people of sound mind, but who chose to file their suits against the defendants after the period of limitation.

Section 2(a) of the Public Authorities Protection Act states:

"2. Where, after the coming into force of this Act, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect –

(a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next after the ceasing thereof;"

It was submitted by the learned counsel for the plaintiffs that section 24(1) of the Limitation Act 1953 (Act 254) should be applied to the plaintiff's case. The learned Federal Counsel contended that section 3 of the Limitation Act excludes the application of that Act to suits against the Government.

Sections 3 and 24(1) of the Limitation Act state:

"3. This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other written law or to any action or arbitration to which the Government or the Government of any State is a party and for which if it were between subjects a period of limitation would have been prescribed by any other written law.

24. (1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years, or in the case of actions to which section 6(4) or section 8 of this Act applies, one year from the date when such person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation had expired:

Provided that in any case to which the provisions of section 29 of this Act apply, this subsection shall apply as if the date from which the period of limitation begin to run were substituted for the date when the right of action accrued."

I am of the view that section 3 of the Limitation Act stresses what "period of limitation" is to be applied. I understand it to mean that in any action or arbitration (whatsoever) or in any action or arbitration to which the Government is a party, where "any other written law" has prescribed any "period of limitation," then that period of limitation as prescribed by the other written law should be applied. I do not think that section 3 of the Limitation Act excludes the application of the Limitation Act totally to an action where the Government is a party. It has to be so understood or else the legislature would not have enacted section 33 in the Limitation Act, which states:

"33. (1) Save as in this Act otherwise provided and without prejudice to the provisions of section 3 of this Act, this Act shall apply to proceedings by or against the Government in like manner as it applies to proceedings between subjects and for the purposes of this Act a proceeding by petition of right shall be deemed to be commenced on the date on which the petition is presented:

Provided that this Act shall not apply to any proceedings by the Government for the recovery of any tax, duty or interest thereon or to any forfeiture proceeding under any written law in force in Malaysia relating to customs duties or excise or to any proceedings in respect of the forfeiture of a ship.

(2) For the purposes of this section proceedings by or against any Government Department or any officer of any Government as such or any person acting on behalf of the Government shall be deemed to be proceedings by or against the Government.

(3) In this section the expression "the Government" shall be deemed to include the Government of any state."

To my mind therefore, the provisions of the Limitation Act should be applied to proceedings by or against the Government in like manner as they apply to proceedings between subjects, except that where the Government is a party to an action, the period within which an action is to be brought by or against the Government is limited to 3 years as so provided by section 2(a) of the Public Authorities Protection Act.

Having arrived at that conclusion, I find that section 24(1) of the Limitation Act applies in the present application to strike out the suit. The learned Federal Counsel for the defendants had not filed any affidavit-in-reply to dispute the allegation of mental disabilities suffered by the first plaintiff. In fact in her submission, the learned Federal Counsel had stated that she was not disputing the medical report on the first plaintiff. I therefore find that the first plaintiff was suffering from a mental disability when his right of action accrued, and that for him, the period of limitation did not begin to run until June 13, 1982, when a committee was appointed under section 10(1) of the Mental Disorders Ordinance, 1952, by the High Court *vide* Originating Summons No. 69 of 1982 to manage the affairs of the first plaintiff. The present civil suit was filed on June 2, 1983, well within the period of three years limited by section 2(a) of the Public Authorities Protection Act.

I find that the application to strike out the plaintiffs' suit had been prematurely and improperly brought by the defendants. I therefore, dismiss the application with cost.

The defendants are, however, not precluded from raising the issue of limitation at the hearing of this suit if the evidence clearly shows that the plaintiff was not under any disability and the Writ had been filed by the plaintiffs outside the limitation period.

[*The defendants appealed to the Supreme Court against the above judgment.*]

SUPREME COURT.

Miss Mary Lim Thian Suan (Senior Federal Counsel) for the appellants.

C. Das and E. Ramasamy for the respondents.

Cur. Adv. Vult.

Syed Agil Barakbah S.C.J. (delivering the Judgment of the Court): This is an appeal against the decision of the learned Judge of the High Court Muar, dismissing the appellants' (defendants') summons-in-chambers to strike out the respondent's (plaintiff's) suit with costs. The application was made by the Senior Federal Counsel of the Attorney General's Chambers (S.F.C.) on behalf of the

appellants on the ground that the plaintiff had not filed the action within three years from the date of termination of his services as a government school teacher as required by section 2(a) of the Public Authorities Protection Act, 1948 (Act 198). The application was resisted by the respondent's solicitors who filed an affidavit in reply.

The uncontroverted facts of the case were that the respondent, a graduate of the Malayan Teachers' College, Pulau Pinang, joined the government teaching service on or about January 20, 1971. He was attached to High School, Muar, Johor and was teaching there till January 31, 1977. He was confirmed as a permanent teacher on January 2, 1974, and about two years later till January1, 1976 he was placed under the pensionable scheme. While teaching in the High School Muar, he was granted 68 days medical leave between September 5, 1976, to November 11, 1976. On November 15, 1976 he was admitted to the Psychiatric Ward of the University Hospital for treatment of mental disorder. On his discharge, he was transferred on medical advice to Sekolah Menengah Jenis Kebangsaan, Melaka reporting for duty on February 1, 1977 to the headmaster of the said school, *i.e.* the first appellant. Subsequently on or about April 15, 1977 he was taken ill again and was admitted to the same ward in the University Hospital Kuala Lumpur for treatment of schizophrenia until May 12, 1977. Later on or about June 29, 1977 while labouring under an attack of schizophrenia, the respondent wrote a letter to the appellants purporting to resign from his service as a teacher by giving one month's notice. The said letter of resignation was accepted by the appellants who terminated his service accordingly.

It was alleged before the learned Judge that the appellants knew the respondent was suffering from mental illness and should not have accepted the letter of resignation. There was a letter from the consultant physician of Hospital Besar, Johor Bahru notifying the appellants of the respondent's mental and physical condition. There was also a request made by the respondent's two brothers to the appellants not to accept the letter of resignation but to convene a medical board to consider the respondent's case. That was turned down. Subsequently the two brothers successfully applied to the High Court *vide* O.S. 69 of 1982 for their appointment as committee to manage the respondent's affairs. They then filed an action on behalf of the respondent against the appellants in the High Court Muar registered as Civil Suit No. 154 of 1983. It was against this civil suit that the S.F.C. applied to strike out but without success. Hence this appeal before us.

The main issue was whether the provision of section 2(a) of the Public Authorities Protection Act 1948 (the Act) applies in the circumstances of this case to the exclusion of the Limitation Act, 1953. It was submitted by the S.F.C. that this section of the Act applies exclusively by virtue of section 3 of the Limitation Act which provides *inter alia* that the Limitation Act shall not apply to any action for which a period of limitation is prescribed by any other written law or to any action to which the government is a party. Section 2 of the Act provides:

> "2. Where, after the coming into force of this Act, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance of execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect –
>
> (a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next after the ceasing thereof."

It was further submitted in view of the above subsection, the respondent's action could only be properly filed within thirty-six months next after the act, neglect or default complained of. In this regard, it was urged that time began to run from the date the letter of resignation was submitted, *i.e.* June 29, 1977, and by the time the writ was filed on May 23, 1983 it was already statute barred on the ground that the three years period of limitation had lapsed. To strengthen her argument, the S.F.C. relied on *Jacobs & Others* v. *London County Council & Another*[2]. This was a claim by an infant against a public authority for damages in respect of alleged negligence of the Council as authority for the maintenance and supervision of the hospital in which the plaintiff was being treated and of the medical superintendent of the hospital. It was based on the English Public Authorities Protection Act. 1893. Section 1 thereof is quite similar to section 2(a) of our Act except that the action had to be instituted within six months next after the act, neglect or default complained of. Greer L.J. rejected the only argument relied on against the application in that the plaintiffs being infants at the material time, the period of limitation did not start to run against them until after they attained the age

of twenty-one. Greer L.J. was of the view that the Act of 1893 was absolute in its terms and rendered an action brought outside the limitation period invalid whether it was brought by a person of full age or an infant. It was held that the action must therefore be brought within six months next after the act, neglect or default complained of.

The learned counsel for the respondent in his submission invited our attention to the judgment of Lord Pearson in *Todd* v. *Davison*[3] in the House of Lords, touching on the English Act of 1893. The said Act contained no provision suspending the running of the six months period of limitation to safeguard the position of persons under disability as in *Jacobs & Others* v. *London County Council & Another.* However, the Limitation Act of 1939 modified the drastic provision of the said Act. Section 21 provides one year period of limitation while section 22 introduces safeguards for persons under disability, subject to certain provisos. It should be noted that section 22 of the English Limitation Act of 1939 stated above is *in pari materia* with section 24 of our Limitation Act. Section 30(1) of the English Act is also similar to our section 33(1).

Section 24 of our Limitation Act 1953 (Act 254) states:

"If on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years, or in the case of actions to which section 6(4) or section 8 of this Act applies, one year from the date when such person ceased to be under a disability or died, whichever event first occurred notwithstanding that the period of limitation had expired:

Provided that in any case to which the provisions of section 29 of this Act apply, this subsection shall apply as if the date from which the period of limitation begins to run were substituted for the date when the right of action accrued."

Section 33(1) says:

"Save as in this Act otherwise provided and without prejudice to the provisions of section 3 of this Act, this Act shall apply to proceedings by or against the Government in like manner as it applies to proceedings between subjects and for the purposes of this Act a proceeding by petition of right shall be deemed to be commenced on the date on which the petition is presented:

Provided that this Act shall not apply to any proceedings by the Government for the recovery of any tax, duty or interest thereon or to any forfeiture proceeding under any written law in force in Malaysia relating to customs duties or excise or to any proceedings in respect of the forfeiture of a ship."

We agree with respect with the learned counsel for the respondent that the decision of *Jacobs & Others* v. *London County Council & Another* relied on by the S.F.C. is obsolete and that the Limitation Act 1939 modified the drastic provisions of the Act of 1893 by safeguarding the position of persons under disability so that the period of limitation commences from the date when the person ceased to be under disability or died, whichever event first occurred. Since our Limitation Act is modelled on the lines of the English Limitation Act and taking into consideration the purpose of the said Act, our view is that in so far as this appeal is concerned, the relevant provisions of our Limitation Act should also apply when construing section 2(a) of the Act. The provisions of sections 24 and 33(1) of the former should be read subject to section 2(a) of the latter by virtue of section 3 of the former. Section 3 deals with the period of limitation presented by any written law. Section 2(a) of the Act provides the required period of three years. It does not oust the application of the Limitation Act where the Government is a party by virtue of section 33(1) which says the Act shall apply to proceedings by and against the Government in like manner as it applies to ordinary proceedings. Where the Act is silent on the commencement of the limitation period in case of disability, section 24 of the Limitation Act provides that the right of action shall commence from the date when such person ceased to be under a disability or died, whichever event occurred first. In our view, "disability" here refers to legal disability. In the case of an insane person, his disability to institute legal proceeding ceases when a committee is appointed under the Mental Disorders Ordinance 1952 to manage his affairs. Time begins to run from the date of the appointment of the committee and not from the date of the letter of resignation or the acceptance by the Government of the offer to resign. Since the action is against the Government, the period of limitation should be thirty-six months under section 2(a) of the Act. The six year period under section 24 of the Limitation Act applies where the Government is not a party. In the present appeal, since the committee was appointed on June 13, 1982 and the suit was filed by the committee on June 2, 1983, it was instituted well within time and therefore not statute barred.

For the reasons stated above, we agree with respect with the decision of the learned Judge and affirm it.

The appeal is dismissed with costs here and the court below.

Appeal dismissed.

Solicitors: *E. Ramasamy & Co.*

MOK HIN WAH & ORS. v. UNITED MALAYAN BANKING CORP. BHD.

[S.C. (Salleh Abas L.P., Seah & Syed Agil Barakbah S.C. JJ.) June 10 & 25, 1987]

[Kuala Lumpur - Supreme Court Civil Appeal No. 490 of 1986]

Contract – Guarantee – Demand for payment – Whether carbon copies of demand meant for borrower sent to guarantors constitute proper demand.

Banking – Loan – Guarantee – Demand for payment – Whether carbon copies of demand meant for borrower sent to guarantors constitute proper demand.

The plaintiff-respondent had brought a claim for money lent to the first defendant under overdraft facilities and interest thereon. The loans were guaranteed under continuing guarantees and indemnities by the other five defendants for the payment of all money owing by the first defendant still remaining unpaid on the general balance of the first defendant's account with the plaintiff. When the defendants failed to pay the stated sum the plaintiff filed a writ and statement of claim against them. Judgment was given for the plaintiff and the defendants-appellants appealed. The main issue in the appeal was whether the notice sent by the plaintiff was a proper demand under the guarantees. It was conceded that all the guarantors received carbon copies of the notice of demand meant for the first defendant.

Held, allowing the appeal: (1) the notice of demand in this case was made only to the first defendant and not to any of the six guarantors including the four appellants;

(2) since bank guarantees invariably specify that the liability of the guarantor is to pay on demand, the words are not devoid of meaning or effect but make the demand a condition precedent to suing the guarantor.

Cases referred to:

(1) *United Prime Corporation Bhd.* v. *Q-Built Construction (M) Sdn. Bhd. & Ors.* K.L. Civil Suit No. 2049 of 1985, unreported.

(2) *Bradford Old Bank Ltd.* v. *Sutcliffe* [1918] 2 K.B. 833, 849.

SUPREME COURT.

James Puthucheary (*Lambert Rasa Ratnam* with him) for the appellant.

A.D. Rajah for the respondent.

Cur. Adv. Vult.

Salleh Abas L.P. (delivering the Judgment of the Court): We heard this appeal on June 10, 1987, and allowed it with costs. We now give our reasons for doing so.

This was a claim in the High Court Kuala Lumpur by UMBC, the plaintiff, for money lent to the first defendant from time to time under overdraft facilities and interest thereon. The loans were guaranteed under continuing guarantees and indemnities by the other five defendants for due payments of all money owing by the first defendant still remaining unpaid on the general balance of the first defendant's account with the plaintiff. The several guarantees and indemnities and their amounts are particularised at paragraph 4A & B of the statement of claim. When the defendants failed to pay the stated sum the plaintiff filed a writ and a statement of claim against them.

The main issue in this appeal is whether the notice sent by the plaintiff was a proper demand under the guarantees. It was conceded that all the guarantors received carbon copies of the notice of demand meant for the first defendant. The notice reads as follows:

"PLEASE TAKE NOTICE that unless the total sum of $307,458.57 (which was subsequently corrected to $332,716.36: see p. 73) plus interest stated above is fully paid within SEVEN (7) days from the date hereof legal proceedings will be instituted against you *and your above guarantors* without further reference to you or to your above guarantors." (emphasis added).

The notice of demand was therefore made only to the first defendant and not to any of the six guarantors including the four appellants. In our opinion, the law is very clear on this point. The respondent as creditor must prove a real demand by sending actual notice of demand to the respective guarantors. Sending a carbon copy of it as in this case is not enough. It is also not sufficient to send carbon copies of the notice meant for the borrower as in the case of *United Prime Corporation Berhad* v. *Q-Built Construction (M) Sdn. Bhd. & Ors.*[1] with words "This is a demand upon you" written against the names of the guarantors appearing at